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BEFORE THE  
**FEDERAL COMMUNICATIONS COMMISSION**  
WASHINGTON, D.C.

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IN THE MATTER OF  
AMENDMENT OF SECTION 73.202(b)  
TABLE OF ALLOTMENTS,  
FM BROADCAST STATIONS  
(THORNDALE, TEXAS)

MM Docket No. 99-243  
RM-9675

To: The Chief, Allocations Branch

**REPLY COMMENTS OF CAMERON BROADCASTING COMPANY**

Henry E. Crawford

Law Offices of  
Henry E. Crawford  
1150 Connecticut Avenue, N.W.  
Suite 900  
Washington, D.C. 20036-4192  
(202) 862-4395

Counsel for  
Cameron Broadcasting Company

September 7, 1999

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**REPLY COMMENTS OF CAMERON BROADCASTING COMPANY**

Cameron Broadcasting Company ("Cameron Broadcasting"), permittee of KHTZ(FM), Cameron, Texas, by counsel, pursuant to 47 CFR §§1.415, 1.420 respectfully submits its *Reply Comments of Cameron Broadcasting Company* in accordance with the Notice of Proposed Rule Making, DA 99-1292, released July 2, 1999 in MM Docket No. 99-243, RM-9675 ("NPRM"). In support thereof, the following is stated:

**I. INTRODUCTION**

1. Comments were due to be filed in this proceeding on or before August 23, 1999. On that date, Comments were filed by Cameron Broadcasting, Houston Christian Broadcasters, Inc. ("HCBI") and Elgin FM Limited Partnership ("Elgin FM"). HCBI and Elgin FM are competing applicants for a new FM facility on Channel 257A at Thorndale, Texas. The proposal contained in the NPRM is mutually exclusive with Cameron Broadcasting's existing construction permit for Channel 286C3 at Cameron, Texas.

2. Both Cameron Broadcasting and Elgin FM oppose HCBI's proposal as set out in the NPRM. Both agree that Channel 286A should not be reserved for noncommercial use.<sup>1</sup> Both Cameron Broadcasting and Elgin FM further agree that HCBI is not entitled to cut-off protection.<sup>2</sup> Elgin FM, however, differs from Cameron Broadcasting in that Elgin FM, following the lead of HCBI, seeks to use this docket to gain advantage over its Channel 257A competitors by expressing an interest in Channel 286 for its own commercial use, or having Channel 286C3 assigned to Thrall, Texas.

3. As argued in Cameron Broadcasting's Comments, only the existing construction permit of KHTZ(FM) at Cameron, Texas merits consideration in this proceeding.

## **II. ARGUMENT**

### **A. The HCBI Petition is Flawed and Not Acceptable for Tender**

4. The HCBI Petition is defective as filed and unacceptable for tender in the context of this rule making. It relies on two unusual legal theories that are inapplicable in the present case: 1) the reservation of a commercial channel for noncommercial use, and 2) cut-off protection to partially resolve the Channel 257A proceeding in HCBI's favor.

5. In the present case there can be no reservation of a commercial channel for noncommercial use. The Thorndale community has Channel 211A

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<sup>1</sup> Cameron Broadcasting's Comments, pp. 4-7; Elgin FM's Comments pp. 2-4.

<sup>2</sup> Cameron Broadcasting's Comments, pp. 8-9; Elgin FM's Comments pp. 4-5.

available in the noncommercial spectrum<sup>3</sup> and the Engineering Statement proffered by HCBI is highly inaccurate in that regard.<sup>4</sup> The HCBI statement does not take into consideration the fact that the rules for allocating a noncommercial channel are substantially different from those governing commercial allocations. The HCBI study involved a limited set of coordinates that do not rule out other viable locations that would support a noncommercial channel.<sup>5</sup> Moreover, HCBI's study is based on a much greater power than would be needed to actually allocate a channel using the rules governing the reserved band.<sup>6</sup> Finally, the HCBI study failed to provide any sort of detailed channel 6 study.<sup>7</sup> As a result, the HCBI study missed the area of zero population that would be permissible under the channel 6 interference rules for noncommercial broadcast facilities.<sup>8</sup> Consequently, reservation of the channel for noncommercial use would not be appropriate in the present case.

6. Neither is cut-off protection warranted in the present circumstances. As argued by Cameron Broadcasting in Comments, such an award would be unprecedented and contrary to the public interest. As noted by Elgin FM in its Comments, allowing cut-off protection to HCBI would be completely inconsistent

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<sup>3</sup> At this point in the proceeding, with the availability of Channel 211A well established, HCBI's failure to apply for the channel begins to border on bad faith. All HCBI need do to end this controversy is apply for the channel.

<sup>4</sup> See Engineering Statement of Doug Vernier, attached hereto as Exhibit 1, p. 1.

<sup>5</sup> Exhibit 1, p. 1.

<sup>6</sup> Exhibit 2, p. 2.

<sup>7</sup> Id.

<sup>8</sup> Id.

with Ashbacker Radio Corporation v. FCC, 326 US 327 (1945). Therefore, this prong of the HCBI Petition is also defective.

7. Because the HCBI Petition was unacceptable for tender, the Commission was entirely correct in not entering the HCBI Petition in the broadcast engineering database, and was further correct in granting the Cameron Broadcasting one-step upgrade construction permit.

**B. The Public Interest Favors Cameron Broadcasting's Construction Permit**

8. Since the HCBI Petition was filed dead on arrival at the Commission, the Cameron Broadcasting construction permit is entitled to cut-off protection from any subsequent filing or expression of interest in this proceeding. Amendment of the Commission's Rules To Permit FM Channel and Class Modifications by Application, 8 FCC Rcd 4735, ¶ 15 (1993). Therefore, applicants in the Channel 257A Thorndale proceeding, such as Elgin FM, are not entitled to prey upon the situation in order to weaken the competitive environment in that proceeding.

9. With the grant of the Cameron Broadcasting construction permit, Cameron Broadcasting can no longer broadcast on its original channel. Its original channel is unprotected. The Commission has stated:

[w]e take this opportunity to clarify the consequences of the grant of a one-step FM commercial station application to change channel or station class. Such a grant amends the table of allotments and modifies that station license to operate on the new channel and/or class....During the construction permit period, the licensee may continue to operate the previously

authorized facilities on an interim or "implied Special Temporary Authority" basis. However, in contrast to our treatment of routine minor modification applications under Section 73.208, the formerly authorized facilities are no longer protected from subsequently filed applications.

Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules, 13 FCC Rcd 14849, n. 22 (1998) (emphasis supplied).

10. As the above passage makes clear, with the grant of the Cameron Broadcasting construction permit, the FM Table of Allotments has already been amended and subsequent proposals, such as those advanced by Elgin FM are not entitled to any consideration in this proceeding.

11. Another consequence of the Commission's policy announced in Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules, supra, is that the original channel is lost to Cameron Broadcasting. Thus, at least one other applicant has already received acceptance by the Commission of an application that would be mutually exclusive with Cameron Broadcasting's old construction permit.<sup>9</sup> It would not be in the public interest for the Commission to effectively strip Cameron Broadcasting of its construction permit, and the community of Cameron, Texas of a radio facility, as the result of one defectively filed petition for rule making.

### **III. CONCLUSION**

12. Cameron Broadcasting has acted at all times with diligence and thoroughness to preserve its rights. It filed its one-step upgrade application within

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<sup>9</sup> See discussion of the application of FM station KULF at Brenham, Texas in Cameron Broadcasting's Comments at pp. 3-4, ¶7.

a month of the November 2, 1998 release of the Public Notice granting its original construction permit. That upgrade was granted by the Commission and in accordance with Commission policy, the FM Table of Allotments was immediately amended, leaving the initial channel without protection. For the Commission to accept the defective HCBI Petition, or begin entertaining new expressions of interests that are mutually exclusive with Cameron Broadcasting's construction permit, would be contrary to fairness, logic and law.

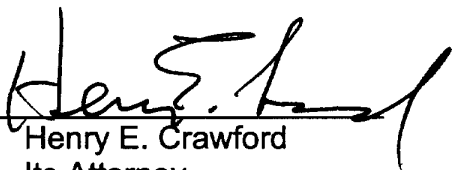
**WHEREFORE**, Cameron Broadcasting Company respectfully requests that its existing construction permit for Channel 286C3 at Cameron, Texas be upheld in the instant proceeding and all other proposals and expressions of interest be denied.

September 7, 1999

Law Offices of  
Henry E. Crawford, Esq.  
1150 Connecticut Avenue, N.W.  
Suite 900  
Washington, D.C. 20036-4192  
(202) 862-4395  
E-Mail: [hc@www.HenryCrawfordLaw.com](mailto:hc@www.HenryCrawfordLaw.com)  
Web: <http://www.HenryCrawfordLaw.com>

Respectfully Submitted,

Cameron Broadcasting Company

By:   
Henry E. Crawford  
Its Attorney



Cameron Broadcasting Company  
Reply Comments of Cameron Broadcasting Company  
September 7, 1999

**EXHIBIT 1**



## **Engineering Statement**

August 26, 1999

We have been asked by Cameron Broadcasting Company ("Cameron Broadcasting") to review the engineering prepared by Lechman and Johnson, Inc for the Houston Christian Broadcasters, Inc ("HCB") with regard to HCB's request to amend Section 73.207 of the Commission's Rules to assign channel 268A to Thorndale, Texas and to reserve the channel for noncommercial educational use. (MM Docket No. 99-243, RM-9675.)

Page # 2 of the Lechman and Johnson, Inc engineering statement states "Table II is a summary sheet of the 20 FM channel studies which shows that there are no reserved channels workable at Thorndale."

This statement is inaccurate in that we have identified channel 211 as being a channel that would provide a better than 60 dBu service signal over Thorndale from a site restricted to 5.87 miles north of Thorndale. Our study shows that the class A station at the study coordinates could have a power of 300 watts from an antenna height above average terrain of 100 meters. We studied the channel-six TV interference implications and in our first engineering statement provided documentation as to the channel's availability and to the lack of a channel-six problem with regard the site. We also provided a coverage map of the proposed station's 60 dBu which covered all of Thorndale.

As we review the Lechman and Johnson, statement we notice a number of problems with the study.

**Thorndale city coordinates were used avoiding others site locations that could have worked.**

The study did not attempt to identify a reserved channel that would work to serve Thorndale with a minimum 60 dBu service signal from any other coordinates.

**The 6 kW study power used for the study was higher than it needed to be and therefore overly preclusive.**

Since channels in the FM reserved band are not allocated through minimum spacings requirements but are identified on a contour to contour basis, channels that would support less than 6 kW could not be identified under the Lechman and Johnson Inc study. Consequently, the Lechman and Johnson Inc study was much more preclusive than it needed to be. There are many non-commercial educational channels operating with less than the maximum power for class A operation.

**No channel-six TV study was provided:**

Lechman and Johnson Inc states

“Also, Thorndale is within the Grade A (68 dBu) of TV channel 6 station KCEN, Temple, Texas. Section 73.525 of the Rules and Regulations set forth technical requirements that must be met to assign a NCE-FM channel near a Channel 6 TV station. It would be difficult, if not impossible, to meet those requirements if a channel was workable. “

This statement was made without any documentation to back up the claim that the channel could not be workable due to the channel-six TV station's presence. From the site we have proposed, north of Thorndale, our channel-six study (provided in our previously filed engineering statement) clearly shows the site to be workable under the rules. While up to 3000 people are allowed within the calculated TV-6 interference area, we calculated that there were no people at all within the interference area.

Consequently, the Lechman and Johnson Inc. engineering study to identify a non-commercial educational reserved FM channel was performed in an insufficient manner to identify all NCE channels available to serve Thorndale.

Doug Vernier

**Declaration:**

I, Doug Vernier, declare that I have received training as an engineer from the University of Michigan School of Engineering. That, I have received degrees from the University in the field of Broadcast Telecommunications. That, I have been active in broadcast consulting for over 25 years;

That, I have held a Federal Communications Commission First Class Radiotelephone License continually since 1964. In 1985, this license was reissued by the Commission as a lifetime General Radiotelephone license no. PG-16-16464;

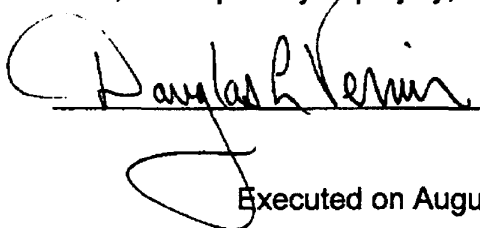
That, I am certified as a Professional Broadcast Engineer (#50258) by the Society of Broadcast Engineers, Indianapolis, Indiana. (Re-certified 11/95.)

That, my qualifications are a matter of record with the Federal Communications Commission;

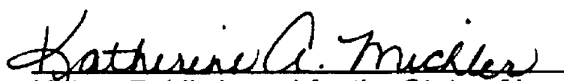
That, I have been retained by Cameron Broadcasting, and as such have prepared the engineering showings appended hereto;

That, I have prepared these engineering showings, the technical information contained in same and the facts stated within are true of my knowledge;

That, under penalty of perjury, I declare that the foregoing is correct.

 Douglas L. Vernier  
Executed on August 26, 1999

Subscribed and sworn before me this 26th day of August, 1999.

  
Notary Public in and for the State of Iowa

My Commission Expires August 10, 2001

## CERTIFICATE OF SERVICE

I, Henry E. Crawford, do hereby certify that copies of the foregoing Reply  
Comments of Cameron Broadcasting Company have been served by United  
States mail, postage prepaid this 7th day of September, 1999 upon the following:

\*John A. Karousos  
Chief, Allocations Branch, Policy & Rules  
Division  
Federal Communications Commission  
Portals II, TW-A325, 445 Twelfth Street, SW  
Washington D.C. 20554

\*Kathleen Scheuerle  
Allocations Branch, Mass Media Bureau  
Federal Communications Commission  
Portals II, TW-A325, 445 Twelfth Street, SW  
Washington D.C. 20554

\*Linda B. Blair, Chief  
Audio Services Division  
Mass Media Bureau  
Federal Communications Commission  
Portals II, TW-A325, 445 Twelfth Street, S.W.  
Washington D.C. 20554

\*Edward P. DeLaHunt  
Federal Communications Commission  
Mass Media Bureau  
Portals II, TW-A325, 445 Twelfth Street, S.W.  
Washington D.C. 20554

Robert Lewis Thompson  
Taylor Thiemann & Aitken, L.C.  
908 King Street  
Alexandria VA 22314  
Counsel to Charles E. Crawford

Lee J. Peltzman  
Shainis & Peltzman, Chartered  
1901 L Street, NW  
Suite 290  
Washington DC 20036-3506  
Counsel to Double K Broadcasting

Mr. Charles McGregor  
Centex Broadcasting Company LTD.  
Radio Station KRXT(FM)  
P.O. Box 1560  
Rockdale, Texas 76567

Ann C. Farhat  
Bechtel & Cole, Chartered  
1901 L Street, NW  
Washington DC 20036  
Counsel to Elgin FM  
Limited Partnership

Jeffrey D. Southmayd  
Southmayd & Miller  
1220 19th Street, NW  
Washington DC 20036  
Counsel to Houston  
Christian Broadcasters, Inc.

KULF(FM)  
May Broadcasting, Inc.  
306 East Main Street  
Brenham TX 77833

\*Hand Delivered



Henry E. Crawford